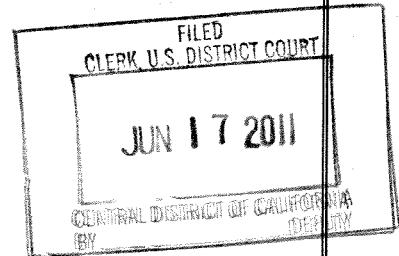


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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

13 UNITED STATES OF AMERICA
14 and PEOPLE OF THE STATE OF
CALIFORNIA, *ex rel.* CALIFORNIA
15 DEPARTMENT OF FISH AND
GAME and CALIFORNIA
16 REGIONAL WATER QUALITY
CONTROL BOARD, CENTRAL
COAST REGION,

17 Plaintiffs,

18 v.

19 HVI CAT CANYON, INC., f/k/a
20 GREKA OIL & GAS, INC.

21 Defendant.

CV 11-05097 DDP(R2x)

22 Civil Action No.

23 COMPLAINT FOR CIVIL
24 PENALTIES, INJUNCTIVE RELIEF,
COST RECOVERY, AND DAMAGES
25 UNDER THE CLEAN WATER ACT,
OIL POLLUTION ACT OF 1990,
26 CALIFORNIA WATER CODE, AND
27 CALIFORNIA FISH AND GAME
CODE

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11 and Game and the California Regional Water
Quality Control Board, Central Coast Region
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The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) and the United States Coast Guard (“Coast Guard”), and the People of the State of California *ex rel.* California Department of Fish and Game (“DFG”) and California Regional Water Quality Control Board, Central Coast Region (“Regional Board”), file this Complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action for civil penalties, injunctive relief, cost recovery, and damages brought against Defendant HVI Cat Canyon, Inc., f/k/a Greka Oil & Gas, Inc. (“Defendant”) under the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701 et seq.; the California Water Code § 13000 et seq.; and the California Fish and Game Code § 5650 et seq.

JURISDICTION, AUTHORITY, VENUE, AND NOTICE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Sections 309(b) and 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E) and (n); Section 1017(b) of the OPA, 33 U.S.C. § 2717(b); 28 U.S.C. §§ 1331, 1345, and 1355; and California Water Code section 13385(a)(5). The Court has supplemental jurisdiction over the state law causes of action for which there is no federal question jurisdiction pursuant to 28 U.S.C. § 1337 because the state law causes of action are so related to the United States' claims that they form part of the same case or controversy. The Court has personal jurisdiction over the parties to this action, including DFG and the Regional Board by virtue of their filing this Complaint.

3. Authority to bring this action on behalf of the United States is vested in the United States Department of Justice by Section 506 of the CWA, 33 U.S.C. § 1366; 28 U.S.C. §§ 516 and 519; and Section 10(a) of Executive Order No.

¹² 12,777, 56 Fed. Reg. 54,757 (Oct. 22, 1991).

4. Authority to bring this action on behalf of DFG and the Regional Board is vested in the California Attorney General by California Water Code sections 13350(g) and 13385(b) and California Fish and Game Code section 5650.1(d).

5. Venue is proper in this District pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E); Section 1017(b) of the OPA, 33 U.S.C. § 2717(b); and 28 U.S.C. §§ 1391 and 1395(a), because Defendant does business in this District and the events giving rise to the claims alleged herein occurred in this District.

6. The United States has given notice of the commencement of this action to the State of California, as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

7. Defendant is a Colorado corporation with headquarters in Santa Maria, California. On May 12, 2011, Greka Oil & Gas, Inc. filed Articles of Amendment with the Colorado Secretary of State changing its name to HVI Cat Canyon, Inc.

STATUTORY AND REGULATORY BACKGROUND

Section 311 of the Clean Water Act

8. Section 311(b) of the CWA, 33 U.S.C. § 1321(b), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or environment of the United States.

9. The CWA defines "discharge" to include "any spilling, leaking, pumping, pouring, emitting, emptying or dumping," except as specifically excluded therein, 33 U.S.C. § 1321(a)(2); "oil" as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed

1 with wastes other than dredged spoil," 33 U.S.C. § 1321(a)(1); and "navigable
 2 waters" as "the waters of the United States, including the territorial seas," 33
 3 U.S.C. § 1362(7).

4 10. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4),
 5 EPA, acting through its delegated authority under Executive Order No. 11,735, 38
 6 Fed. Reg. 21,243 (Aug. 7, 1973), has determined by regulation that discharges of
 7 oil in such quantities as may be harmful to the public health or welfare or
 8 environment of the United States include discharges of oil that "(a) Violate
 9 applicable water quality standards; or (b) Cause a film or sheen upon or
 10 discoloration of the surface of the water or adjoining shorelines or cause a sludge
 11 or emulsion to be deposited beneath the surface of the water or upon adjoining
 12 shorelines." 40 C.F.R. § 110.3.

13 11. Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A),
 14 provides that any person who is the owner, operator, or person in charge of an
 15 onshore facility from which oil is discharged in violation of Section 311(b)(3) of
 16 the CWA shall be subject to a civil penalty.

17 12. Section 311(a) of the CWA defines "person" to include corporations,
 18 33 U.S.C. § 1321(a)(7); and "onshore facility" as "any facility (including, but not
 19 limited to, motor vehicles and rolling stock) of any kind located in, on, or under,
 20 any land within the United States other than submerged land," 33 U.S.C.
 21 § 1321(a)(10).

22 13. Pursuant to Section 311(b)(7)(A) of the CWA, EPA's 2004 Civil
 23 Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121 (Feb. 13, 2004),
 24 and EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg.
 25 75,340 (Dec. 11, 2008), each violation of Section 311(b)(3) of the CWA occurring
 26 from March 15, 2004, through January 12, 2009, is subject to a civil penalty of up
 27 to \$32,500 per day or up to \$1,100 per barrel of oil discharged, and each violation
 28 of Section 311(b)(3) of the CWA occurring after January 12, 2009, is subject to a

civil penalty of up to \$37,500 per day or up to \$1,100 per barrel of oil discharged.
40 C.F.R. § 19.4.

14. Pursuant to Section 311(b)(7)(D) of the CWA, 33 U.S.C.

§ 1321(b)(7)(D), and EPA's 2004 Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121 (Feb. 13, 2004), where the violation of Section 311(b)(3) of the CWA occurring after March 15, 2004 is the result of gross negligence or willful misconduct, the owner, operator, or person in charge is subject to a civil penalty of up to \$4,300 per barrel of oil discharged.

Sections 301 and 309 of the Clean Water Act

15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person, except as authorized by the CWA.

16. Section 502 of the CWA defines “person” to include corporations, 33 U.S.C. § 1362(5); “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source,” 33 U.S.C. § 1362(12); “pollutant” to include “solid waste, . . . chemical wastes, . . . biological materials, . . . and industrial . . . waste discharged into water,” 33 U.S.C. § 1362(6); “navigable waters” as “the waters of the United States, including the territorial seas,” 33 U.S.C. § 1362(7); and “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged,” 33 U.S.C. § 1362(14).

17. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes EPA to bring a civil action seeking “appropriate relief, including a permanent or temporary injunction,” for violations of Section 301 of the CWA.

Oil Pollution Prevention Regulations

18. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), authorizes the
President to issue regulations establishing procedures, methods, equipment, and

1 other requirements to prevent and contain discharges of oil and hazardous
2 substances from onshore facilities.

3 19. Pursuant to Section 311(j)(1) of the CWA, EPA, acting through its
4 delegated authority under Executive Order No. 11,735, 38 Fed. Reg. 21,243 (Aug.
5 7, 1973), and Section 2(b)(1) of Executive Order No. 12,777, 56 Fed. Reg. 54,757
6 (Oct. 22, 1991), has issued Oil Pollution Prevention regulations governing owners
7 and operators of non-transportation-related onshore and offshore facilities. These
8 regulations are found at 40 C.F.R. Part 112.

9 20. The Oil Pollution Prevention regulations apply to “any owner or
10 operator of a non-transportation-related onshore or offshore facility engaged in
11 drilling, producing, gathering, storing, processing, refining, transferring,
12 distributing, using, or consuming oil and oil products, which, due to its location,
13 could reasonably be expected to discharge oil in quantities that may be harmful, as
14 described in [40 C.F.R. § 110.3], into or upon the navigable waters of the United
15 States or adjoining shorelines . . . that has oil in: (1) Any aboveground container;
16 . . . or (3) Any container that is used for standby storage, for seasonal storage, or
17 for temporary storage, or not otherwise ‘permanently closed’ as defined in [40
18 C.F.R.] § 112.2.” 40 C.F.R. § 112.1(b).

19 21. 40 C.F.R. § 112.2 defines “onshore facility” as “any facility of any
20 kind located in, on, or under any land within the United States, other than
21 submerged lands.”

22 22. 40 C.F.R. § 112.3 requires the owner or operator of a regulated
23 facility to prepare and implement a written Spill Prevention, Control, and
24 Countermeasure Plan (“SPCC Plan”) in accordance with 40 C.F.R. § 112.7 and
25 any other applicable section of 40 C.F.R. Part 112.

26 23. On July 17, 2002, EPA promulgated a final rule (“Revised Rule”)
27 amending the Oil Pollution Prevention regulations. 67 Fed. Reg. 47,042 (July 17,
28 2002). The effective date of the Revised Rule was August 16, 2002.

1 24. The owner or operator of a regulated facility in operation as of August
2 16, 2002, that had not prepared and implemented an SPCC Plan as of that date was
3 required to prepare and implement an SPCC Plan immediately that met the
4 requirements of the Revised Rule. 40 C.F.R. § 112.3; 67 Fed. Reg. 47,042, 47,082.

5 25. The owner or operator of a regulated facility in operation as of August
6 16, 2002, that had prepared and implemented a SPCC Plan as of that date was
7 required (a) to maintain an SPCC Plan in accordance with the requirements of 40
8 C.F.R. Part 112 (2002); and (b) to amend the SPCC Plan to meet the requirements
9 of the Revised Rule, and implement that amended SPCC Plan, no later than
10 November 10, 2010 (for onshore facilities required to have and submit Facility
11 Response Plans), or November 10, 2011 (for other onshore facilities). 40 C.F.R.
12 § 112.3(a)(1); 67 Fed. Reg. 47,042, 47,082; 75 Fed. Reg. 63,093, 63,096 (Oct. 14,
13 2010).

14 26. Pursuant to 40 C.F.R. § 112.20(a), the “owner or operator of any non-
15 transportation-related onshore facility that, because of its location, could
16 reasonably be expected to cause substantial harm to the environment by
17 discharging oil into or on the navigable waters or adjoining shorelines” must
18 prepare and submit to EPA a Facility Response Plan that meets the requirements
19 set forth in that section.

20 27. Pursuant to 40 C.F.R. § 112.20(f)(1), a facility “could reasonably be
21 expected to cause substantial harm to the environment” within the meaning of 40
22 C.F.R. § 112.20(a) if, inter alia, the facility has a total oil storage capacity of at
23 least one million gallons and has had a reportable oil discharge of at least 10,000
24 gallons within the last five years.

25 28. Pursuant to 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), and
26 EPA’s 2004 and 2008 Civil Monetary Penalty Inflation Adjustment Rules, 69 Fed.
27 Reg. 7121 (Feb. 13, 2004) and 73 Fed. Reg. 75,340 (Dec. 11, 2008), each violation
28 of the Oil Pollution Prevention regulations occurring from March 15, 2004,

1 through January 12, 2009, is subject to a civil penalty of up to \$32,500 per day of
2 violation, and each violation of the Oil Pollution Prevention regulations occurring
3 after January 12, 2009, is subject to a civil penalty of up to \$37,500 per day of
4 violation. 40 C.F.R. § 19.4.

5 The Oil Pollution Act of 1990

6 29. Section 1002(a) of the OPA, 33 U.S.C. § 2702(a), provides that “each
7 responsible party for . . . a facility from which oil is discharged, or which poses the
8 substantial threat of a discharge of oil, into or upon the navigable waters or
9 adjoining shorelines . . . is liable for the removal costs and damages specified in
10 [33 U.S.C. § 2702(b)] that result from such incident.”

11 30. Section 1001(32) of the OPA, 33 U.S.C. § 2701(32), defines
12 “responsible party” to include, “[i]n the case of an onshore facility (other than a
13 pipeline), any person owning or operating the facility . . .”

14 31. Section 1001(24) of the OPA, 33 U.S.C. § 2701(24), defines “onshore
15 facility” to mean “any facility . . . of any kind located in, on, or under, any land
16 within the United States other than submerged land.”

17 32. Section 1001(9) of the OPA, 33 U.S.C. § 2701(9), defines “facility” to
18 mean “any structure, group of structures, equipment, or device (other than a vessel)
19 which is used for one or more of the following purposes: exploring for, drilling
20 for, producing, storing, handling, transferring, processing, or transporting oil.”

21 33. Section 1001(27) of the OPA, 33 U.S.C. § 2701(27), defines “person”
22 to include a corporation.

23 34. Section 1001(23) of the OPA, 33 U.S.C. § 2701(23), defines “oil” to
24 mean “oil of any kind or in any form, including, but not limited to, petroleum, fuel
25 oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.”

26 35. Section 1001(7) of the OPA, 33 U.S.C. § 2701(7), defines “discharge”
27 to mean “any emission (other than natural seepage), intentional or unintentional”
28 and to include “spilling, leaking, pumping, pouring, emitting, emptying, or

dumping.”

36. Section 1001(21) of the OPA, 33 U.S.C. § 2701(21), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

37. Section 1001(31) of the OPA, 33 U.S.C. § 2701(31), defines “removal costs” to mean “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.”

38. Section 1001(30) of the OPA, 33 U.S.C. § 2701(30), defines “remove” and “removal” to mean “containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”

39. Section 1002(b)(1) of the OPA, 33 U.S.C. § 2702(b)(1), provides that the “removal costs” referred to in Section 1002(a) of the OPA, 33 U.S.C. § 2702(a), include “all removal costs incurred by the United States . . . under [33 U.S.C. § 1321] subsection (c), (d), (e), or (l).”

40. Section 1001(14) of the OPA, 33 U.S.C. § 2701(14), defines “incident” to mean “any occurrence or series of occurrences having the same origin, involving one or more . . . facilities . . . resulting in the discharge or substantial threat of discharge of oil.”

41. Federal removal actions are funded through the Oil Spill Liability Trust Fund (“Fund”), which is administered by the Coast Guard’s National Pollution Funds Center and financed in part by recoveries from responsible parties.

The California Water Code Section 13350

42. California Water Code section 13350(a) prohibits, through the imposition of civil liability, any person from causing or permitting "any oil or

residuary product of petroleum to be deposited in or on any waters of the state . . . ”

43. California Water Code section 13050(e) defines “waters of the state” as “any surface water or groundwater, including saline waters, within the boundaries of the state.”

44. The scope of liability for violation of California Water Code section 13350(a) is set forth in California Water Code section 13350(d), which authorizes a court to impose civil liability on either a per day basis, or a per gallon basis, but not both. The per day penalty may not exceed \$15,000 for each day the violation occurs, and the per gallon penalty may not exceed 20 dollars for each gallon of waste discharged.

The California Water Code Section 13385

45. The California Water Code also prohibits, through the imposition of civil liability, the violation of certain provisions of the federal CWA. In particular, California Water Code section 13385(a)(5) authorizes the imposition of civil liability on any person who violates, among other provisions, CWA section 301.

46. As discussed above, CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in accordance with certain requirements, such as holding a valid National Pollutant Discharge Elimination System (“NPDES”) permit.

47. California Water Code section 13385(b) provides for the imposition of civil penalties for violations of section 13385(a). Available penalties include a per day penalty, plus a per gallon penalty in certain circumstances. The per day penalty may not exceed \$25,000 per day. The per gallon penalty may be imposed in an amount not to exceed 25 dollars per gallon for each gallon over 1,000 gallons discharged but not cleaned up.

The California Fish and Game Code Section 5650

48. California Fish and Game Code section 5650(a) prohibits placing

petroleum or any residuary product of petroleum in or on a water of the state, or in a place where it can pass into a water of the state.

49. California Fish and Game Code section 89.1 defines “water of the state” to have the same meaning as used in the California Water Code section 13050(e).

50. California Fish and Game Code section 5650.1 provides that “[e]very person who violates Section 5650 is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.”

The California Fish and Game Code Section 12016

51. California Fish and Game Code section 12016(a) provides that “any person who discharges or deposits any substance or material deleterious to fish, plant, bird, or animal life or their habitat” is “liable civilly to the department [DFG] for all actual damages to fish, plant, bird, or animal life or their habitat”

52. California Fish and Game Code section 12016(a) also provides that DFG is also entitled to recover “the reasonable costs incurred in cleanup the deleterious substance or material or abating its effects, or both.”

The California Fish and Game Code Section 13013

53. California Fish and Game Code section 13230 authorizes DFG to expend monies from its Oil Pollution Administration Subaccount to administer certain pollution response, abatement and habitat restoration activities.

54. California Fish and Game Code section 13013 requires DFG to “recover from the spiller [or] responsible party . . . all expenditures paid from the Oil Pollution Administration Subaccount “and all costs incurred by the department arising from the administration and enforcement of applicable pollution laws.”

GENERAL ALLEGATIONS

55. Defendant is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5); Section 1001(27) of the OPA, 33 U.S.C. § 2701(27); California Water Code sections 13350 and 13385; and

1 California Fish and Game Code sections 5650, 5650.1, and 12016.

2 56. Defendant is a “spiller” or “responsible party” within the meaning of
3 California Fish and Game Code section 13013.

4 57. At times relevant to this action, Defendant owned and/or operated the
5 12 oil and gas production facilities identified in Attachment A. Defendant
6 continues to own and/or operate each facility identified in Attachment A except for
7 the U-Cal Facility.

8 58. At times relevant to this action, Defendant owned and/or operated the
9 Bradley Three-Island Facility, an oil and gas production facility located at 3851
10 Telephone Road in Santa Maria, California. Defendant continues to own and/or
11 operate the Bradley Three-Island Facility.

12 59. Defendant’s oil and gas production facilities identified in Attachments
13 A and the Bradley Three-Island Facility extract crude oil from oil reservoirs
14 through the injection of heated water. The fluids pumped from the ground are a
15 combination of crude oil and produced water. In order to make the crude oil
16 suitable for processing, Defendant separates crude oil from produced water in
17 tanks, sumps, separators, and ponds.

18 60. Produced water is present in a reservoir with crude oil, or injected into
19 the reservoir to help extract crude oil, and is produced to the surface together with
20 the crude oil. Produced water typically contains water, crude oil, grease, dissolved
21 salts, organic compounds, and inorganic compounds.

22 61. Crude oil and produced water are “oil” within the meaning of Section
23 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1); 40 C.F.R. § 112.2; and Section
24 1001(23) of the OPA, 33 U.S.C. § 2701(23).

25 62. Crude oil and produced water are “pollutants” within the meaning of
26 Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

27 63. Crude oil and produced water are “oil or residuary products of
28 petroleum” within the meaning of California Water Code section 13350(a).

64. Crude oil and produced water are “petroleum . . . or any residuary product of petroleum” and a “substance or material deleterious to fish, plant life, or bird life” within the meaning of California Fish and Game Code section 5650.

Davis Facility Spills

65. On or about December 7, 2005, an injection tank known as Waste Water Tank #2 at Defendant's Davis Facility in Los Olivos, California, overfilled and ruptured, spilling crude oil and produced water ("December 2005 Davis Spill"). The crude oil and produced water escaped the Davis Facility's secondary containment unit and flowed down an access road and through a drainage culvert.

66. Crude oil and produced water that spilled from the Davis Facility during the December 2005 Davis Spill reached an unnamed tributary to Zaca Creek that runs through Santa Barbara County Assessor Parcel Numbers 133-190-001, 133-190-004, 133-190-007, 133-190-009, and 133-151-058 (“Zaca Tributary”) and its adjoining shorelines.

67. The December 2005 Davis Spill was of such quantity as to cause a film or sheen upon, or discoloration of, Zaca Tributary or adjoining shorelines, or to cause a sludge or emulsion to be deposited into Zaca Tributary or upon adjoining shorelines.

68. On or about January 5, 2008, Waste Water Tank #2 at the Davis Facility overfilled and ruptured, spilling crude oil and produced water (“January 2008 Davis Spill”). The crude oil and produced water escaped the Davis Facility’s secondary containment unit and flowed down an access road and through a drainage culvert.

69. Crude oil and produced water that spilled from the Davis Facility during the January 2008 Davis Spill reached Zaca Tributary and its adjoining shorelines.

70. The January 2008 Davis Spill was of such quantity as to cause a film or sheen upon, or discoloration of, Zaca Tributary or adjoining shorelines, or to

1 cause a sludge or emulsion to be deposited into Zaca Tributary or upon adjoining
2 shorelines.

3 71. Defendant owned and/or operated the Davis Facility at the time of the
4 December 2005 Davis Spill and the January 2008 Davis Spill.

5 72. The Davis Facility is a structure, group of structures, equipment, or
6 device used for exploring for, drilling for, producing, storing, handling,
7 transferring, processing, and/or transporting oil.

8 73. The Davis Facility is a “facility” within the meaning of Section
9 1001(9) of the OPA, 33 U.S.C. § 2701(9).

10 74. The Davis Facility is a facility located on land within the United
11 States that is not submerged land.

12 75. The Davis Facility is an “onshore facility” within the meaning of
13 Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and Section 1001(24) of
14 the OPA, 33 U.S.C. § 2701(24).

15 76. Waste Water Tank #2 is a container from which pollutants are or may
16 be discharged.

17 77. Waste Water Tank #2 is a “point source” within the meaning of
18 Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19 78. Neither the 2005 Davis Spill nor the January 2008 Davis Spill was
20 authorized by the CWA, or by a permit or regulation issued pursuant to the CWA.

21 79. Zaca Tributary is a tributary to Zaca Creek. Zaca Creek is a tributary
22 to the Santa Ynez River. The Santa Ynez River is a tributary to the Santa Ynez
23 River Estuary, a traditionally navigable water that flows into the Pacific Ocean.

24 80. Zaca Tributary, Zaca Creek, and the Santa Ynez River each have a
25 bed, banks, and ordinary high water marks.

26 81. Zaca Tributary, Zaca Creek, the Santa Ynez River, and the Santa
27 Ynez River Estuary are “navigable waters” within the meaning of Sections
28 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7), and

1 Section 1001(21) of the OPA, 33 U.S.C. § 2701(21).

2 82. The December 2005 Davis Spill and January 2008 Davis Spill were
3 discharges of oil into or upon the navigable waters of the United States or
4 adjoining shorelines within the meaning of Section 311(b)(3) of the CWA, 33
5 U.S.C. § 1321(b)(3).

6 83. The December 2005 Davis Spill and January 2008 Davis Spill were
7 each of a quantity “as may be harmful” within the meaning of Section 311(b)(3) of
8 the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

9 84. The December 2005 Davis Spill and January 2008 Davis Spill were
10 unlawful discharges of a pollutant within the meaning of Section 301(a) of the
11 CWA, 33 U.S.C. § 1311(a).

12 85. The January 2008 Davis Spill was an “incident” within the meaning
13 of Section 1001(14) of the OPA, 33 U.S.C. § 2701(14).

14 86. After the January 2008 Davis Spill, EPA and the Coast Guard
15 incurred costs in the amount of \$403,921.87 in their efforts to contain and remove
16 oil from water and shorelines, or in taking other actions as necessary to minimize
17 or mitigate damage to the public health or welfare.

18 87. The removal costs incurred by EPA and the Coast Guard in
19 connection with the January 2008 Davis Spill were paid from the Fund.

20 88. On December 30, 2009, the Coast Guard, on behalf of the Fund, sent
21 Defendant a written request under Subchapter I of the OPA for compensation in
22 the amount of \$403,921.87 for removal costs incurred in connection with the
23 January 2008 Davis Spill.

24 89. Defendant has not paid the Coast Guard for removal costs incurred in
25 connection with the January 2008 Davis Spill.

26 90. The January 2008 Davis Spill was a release to a water of the state
27 within the meaning of California Water Code section 13050(e), which caused
28 natural resource damages, and for which DFG expended monies from the Oil

1 Pollution Administration Subaccount which Defendant has not repaid in full to
2 DFG.

3 Bell Facility Spills

4 91. On or about July 16, 2007, a flowline at Defendant's Bell Facility in
5 Santa Maria, California, ruptured, spilling crude oil and produced water ("July
6 2007 Bell Spill").

7 92. Crude oil and produced water that spilled from the Bell Facility
8 during the July 2007 Bell Spill reached an unnamed tributary to Sisquoc Creek that
9 runs along Palmer Road ("Palmer Road Creek") and its adjoining shorelines.

10 93. The July 2007 Bell Spill was of such quantity as to cause a film or
11 sheen upon, or discoloration of, Palmer Road Creek or adjoining shorelines, or to
12 cause a sludge or emulsion to be deposited into Palmer Road Creek or upon
13 adjoining shorelines.

14 94. On or about December 7, 2007, an injection pond at the Bell Facility
15 known as the Blochman Pond overflowed, spilling crude oil and produced water
16 ("December 2007 Bell Spill"). The crude oil and produced water escaped the Bell
17 Facility's secondary containment unit.

18 95. Crude oil and produced water that spilled from the Bell Facility
19 during the December 2007 Bell Spill reached Palmer Road Creek and its adjoining
20 shorelines.

21 96. The December 2007 Bell Spill was of such quantity as to cause a film
22 or sheen upon, or discoloration of, Palmer Road Creek or adjoining shorelines, or
23 to cause a sludge or emulsion to be deposited into Palmer Road Creek or upon
24 adjoining shorelines.

25 97. On or about January 29, 2008, a corroded pipe at a settling pond at the
26 Bell Facility failed, spilling crude oil and produced water ("January 2008 Bell
27 Spill"). The crude oil and produced water escaped the Bell Facility's secondary
28 containment unit.

1 98. Crude oil and produced water that spilled from the Bell Facility
2 during the January 2008 Bell Spill reached Palmer Road Creek, Sisquoc Creek,
3 and their adjoining shorelines.

4 99. The January 2008 Bell Spill was of such quantity as to cause a film or
5 sheen upon, or discoloration of, Palmer Road Creek or adjoining shorelines, or to
6 cause a sludge or emulsion to be deposited into Palmer Road Creek or upon
7 adjoining shorelines.

8 100. On or about April 15, 2008, EPA determined that crude oil and
9 produced water were leaking through the cracked concrete walls of a surface
10 impoundment at the Bell Facility known as the Gato Ponds (“April 2008 Bell
11 Spill”).

12 101. The Gato Ponds were approximately 100 feet from Sisquoc Creek.

13 102. The April 2008 Bell Spill posed a substantial threat of a discharge of
14 oil into or upon Sisquoc Creek or adjoining shorelines.

15 103. On April 30, 2008, EPA issued Defendant an Order for Removal,
16 Mitigation or Prevention of a Substantial Threat of Oil Discharge (“Gato Ponds
17 Removal Order”) under Section 311(c) of the CWA, 33 U.S.C. § 1321(c), directing
18 Defendant to remove the materials in the Gato Ponds, remove or decontaminate the
19 Gato Ponds and the associated superstructure, and sample subsurface soil beneath
20 and adjacent to the Gato Ponds for contamination.

21 104. Crude oil and produced water also spilled from a pipe, flowline, or
22 injection line at the Bell Facility on or about June 8, 2005; July 13, 2005; August
23 11, 2005; December 27, 2008 (“December 2008 Bell Spill”); May 1, 2009;
24 October 14, 2010; and December 21, 2010.

25 105. Crude oil and/or produced water that spilled from the Bell Facility on
26 or about each of the dates listed in Paragraph 104 reached Palmer Road Creek and
27 its adjoining shorelines.

28 106. Each of the spills described in Paragraph 104 was of such quantity as

1 to cause a film or sheen upon, or discoloration of, Palmer Road Creek or adjoining
2 shorelines, or to cause a sludge or emulsion to be deposited into Palmer Road
3 Creek or upon adjoining shorelines.

4 107. Defendant owned and/or operated the Bell Facility at the time of the
5 July 2007 Bell Spill, the December 2007 Bell Spill, the January 2008 Bell Spill,
6 the April 2008 Bell Spill, and each of the spills described in Paragraph 104.

7 108. The Bell Facility is a structure, group of structures, equipment, or
8 device used for exploring for, drilling for, producing, storing, handling,
9 transferring, processing, and/or transporting oil.

10 109. The Bell Facility is a “facility” within the meaning of Section 1001(9)
11 of the OPA, 33 U.S.C. § 2701(9).

12 110. The Bell Facility is a facility located on land within the United States
13 that is not submerged land.

14 111. The Bell Facility is an “onshore facility” within the meaning of
15 Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and Section 1001(24) of
16 the OPA, 33 U.S.C. § 2701(24).

17 112. The pipes, flowlines, and injection lines described in Paragraphs 91,
18 97, and 104 are pipes and/or conduits from which pollutants are or may be
19 discharged.

20 113. The Blochman Pond at the Bell Facility is a container from which
21 pollutants are or may be discharged.

22 114. The pipes, flowlines, and injection lines described in Paragraphs 91,
23 97, and 104 and the Blochman Pond at the Bell Facility are “point sources” within
24 the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

25 115. The July 2007 Bell Spill, the December 2007 Bell Spill, the January
26 2008 Bell Spill, and the spills described in Paragraph 104 were not authorized by
27 the CWA, or by a permit or regulation issued pursuant to the CWA.

28 116. Palmer Road Creek is a tributary to Sisquoc Creek. Sisquoc Creek is

1 a tributary to Cat Canyon Creek. Cat Canyon Creek is a tributary to the Sisquoc
2 River. The Sisquoc River is a tributary to the Santa Maria River. The Santa Maria
3 River is a tributary to the Santa Maria River Estuary, a traditionally navigable
4 water that flows into the Pacific Ocean.

5 117. Palmer Road Creek, Sisquoc Creek, Cat Canyon Creek, the Sisquoc
6 River, and the Santa Maria River each have a bed, banks, and ordinary high water
7 marks.

8 118. Palmer Road Creek, Sisquoc Creek, Cat Canyon Creek, the Sisquoc
9 River, the Santa Maria River, and the Santa Maria River Estuary are “navigable
10 waters” within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33
11 U.S.C. §§ 1321(b)(3) and 1362(7), and Section 1001(21) of the OPA, 33 U.S.C.
12 § 2701(21).

13 119. The July 2007 Bell Spill, the December 2007 Bell Spill, the January
14 2008 Bell Spill, and the spills described in Paragraph 104 were discharges of oil
15 into or upon the navigable waters of the United States or adjoining shorelines
16 within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

17 120. The July 2007 Bell Spill, the December 2007 Bell Spill, the January
18 2008 Bell Spill, and the spills described in Paragraph 104 were each of a quantity
19 “as may be harmful” within the meaning of Section 311(b)(3) of the CWA, 33
20 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

21 121. The July 2007 Bell Spill, the December 2007 Bell Spill, the January
22 2008 Bell Spill, and the spills described in Paragraph 104 were unlawful
23 discharges of a pollutant within the meaning of Section 301(a) of the CWA, 33
24 U.S.C. § 1311(a).

25 122. The January 2008 Bell Spill, April 2008 Bell Spill, and December
26 2008 Bell Spill were each “incidents” within the meaning of Section 1001(14) of
27 the OPA, 33 U.S.C. § 2701(14).

28 123. After the January 2008 Bell Spill, EPA incurred costs in the amount

1 of \$1,770,461.41 in its efforts to contain and remove oil from water and shorelines,
2 or in taking other actions as necessary to minimize or mitigate damage to the
3 public health or welfare.

4 124. After the April 2008 Bell Spill, EPA incurred costs in the amount of
5 \$44,839.20 to prevent, minimize, or mitigate oil pollution from the Gato Ponds.

6 125. After the December 2008 Bell Spill, EPA and the Coast Guard
7 incurred costs in the amount of \$189,782.16 in their efforts to contain and remove
8 oil from water and shorelines, or in taking other actions as necessary to minimize
9 or mitigate damage to the public health or welfare.

10 126. The removal costs incurred by EPA and the Coast Guard in
11 connection with the January 2008 Bell Spill, April 2008 Bell Spill, and December
12 2008 Bell Spill were paid from the Fund.

13 127. On December 30, 2009, the Coast Guard, on behalf of the Fund, sent
14 Defendant a written request under Subchapter I of the OPA for compensation in
15 the amount of \$1,770,461.41 for removal costs incurred in connection with the
16 January 2008 Bell Spill.

17 128. On December 23, 2009, the Coast Guard, on behalf of the Fund, sent
18 Defendant a written request under Subchapter I of the OPA for compensation in
19 the amount of \$44,839.20 for removal costs incurred in connection with the April
20 2008 Bell Spill.

21 129. On December 30, 2009, the Coast Guard, on behalf of the Fund, sent
22 Defendant a written request under Subchapter I of the OPA for compensation in
23 the amount of \$189,782.16 for removal costs incurred in connection with the
24 December 2008 Bell Spill.

25 130. Defendant has not paid the Coast Guard for removal costs incurred in
26 connection with the January 2008 Bell Spill, April 2008 Bell Spill, or December
27 2008 Bell Spill.

28 131. The July 2007 Bell Spill, the December 2007 Bell Spill, the January

1 2008 Bell Spill, the December 2008 Bell Spill and the spills listed in Paragraph
2 104 after 2007 were all releases to waters of the state within the meaning of
3 California Water Code section 13050(e). These spills caused natural resource
4 damages. DFG expended monies from the Oil Pollution Administration
5 Subaccount to respond to these spills which Defendant has not repaid in full to
6 DFG.

7 Other Spills in Violation of State Law

8 132. In addition to each of the spills identified in Paragraph 131, Defendant
9 also was responsible for causing other spills in violation of state law, each of which
10 was made to a water of the state.

11 133. On June 8, 2007, a 6-inch produced water pipe ruptured at
12 Defendant's Bradley Three-Island Facility, causing a spill of crude oil and
13 produced water to a creek bed ("June 2007 Bradley Three-Island Spill").

14 134. Between January 24, 2008, and February 3, 2008, Defendant
15 experienced at least six spills at its Bradley Three-Island, U-Cal, and Cat Canyon
16 Facilities (the "January/February 2008 Spills").

17 a. On January 24, 2008, a broken generator at Defendant's
18 Bradley Three-Island Facility caused the release of crude oil and produced water
19 being released to a nearby creek bed ("Spill Event No. 1").

20 b. On January 24, 2008, "out of service" omni vessels overflowed
21 and leaked at Defendant's U-Cal Facility, causing a spill of crude oil and produced
22 water being released to an unnamed pond and thereafter to a creek ("Spill Event
23 No. 2").

24 c. On January 24, 2008, omni-pits overflowed and leaked at
25 Defendant's U-Cal Facility, causing a spill of crude oil and produced water being
26 released to an unnamed pond and thereafter to a creek ("Spill Event No. 3").

27 d. On January 27, 2008, waste water containment tank leaked at
28 Defendant's Cat Canyon Facility, causing a spill of crude oil and produced water

1 to be released to a nearby creek (“Spill Event No. 6”).

2 e. On January 27, 2008, an electrical transformer on a power pole
3 fell at Defendant’s Bradley Three-Island Facility, causing a spill of PCB-
4 containing oil to be released to an adjacent creek (“Spill Event No. 7”).

5 f. On February 3, 2008, a pool of crude oil and produced water
6 leaked from behind a berm at Defendant’s Security Facility, causing a spill of
7 crude oil and produced water to reach a creek (“Spill Event No. 8”).

8 135. On March 3, 2008, a 4-inch corroded flow line was discovered to have
9 previously failed at Defendant’s U-Cal Facility directly above a creek, causing a
10 release of crude oil directly into the creek (“March 2008 U-Cal Spill”).

11 136. On July 2, 2009, a leaking injection line at Defendant’s Bell Facility
12 caused a spill of crude oil and produced water to reach an unnamed creek (“July
13 2009 Bell Spill”).

14 The Williams B Removal Action

15 137. On March 12, 2008, EPA observed storage tanks at the Williams B
16 Facility that were uncovered, heavily corroded, and leaking oil onto the ground.
17 EPA observed no secondary containment around the storage tanks.

18 138. The Williams B Facility is bordered to the west by an unnamed
19 tributary to Cat Canyon Creek.

20 139. On March 19, 2008, EPA issued Defendant an Order for Removal,
21 Mitigation or Prevention of a Substantial Threat of Oil Discharge (“Williams B
22 Removal Order”) under Section 311(c) of the CWA, 33 U.S.C. § 1321(c), directing
23 Defendant to remove the oil from the tanks, demolish the tanks, and excavate
24 contaminated soil.

25 140. EPA monitored Defendant’s performance of the removal action
26 (“Williams B Removal Action”) pursuant to the Williams B Removal Order.

27 141. At the time of the Williams B Removal Order, the Williams B Facility
28 posed a substantial threat of a discharge of oil into or upon Cat Canyon Creek or

1 adjoining shorelines.

2 142. Defendant owned and/or operated the Williams B Facility at the time
3 of the Williams B Removal Order and the Williams B Removal Action.

4 143. At all relevant times, the Williams B Facility was a structure, group of
5 structures, equipment, or device used for exploring for, drilling for, producing,
6 storing, handling, transferring, processing, and/or transporting oil.

7 144. At all relevant times, the Williams B Facility was a “facility” within
8 the meaning of Section 1001(9) of the OPA, 33 U.S.C. § 2701(9).

9 145. At all relevant times, the Williams B Facility was a facility located on
10 land within the United States that is not submerged land.

11 146. At all relevant times, the Williams B Facility was an “onshore
12 facility” within the meaning of Section 1001(24) of the OPA, 33 U.S.C.
13 § 2701(24).

14 147. The circumstances that resulted in the conditions described in
15 Paragraph 137 constituted an “incident” within the meaning of Section 1001(14) of
16 the OPA, 33 U.S.C. § 2701(14).

17 148. While monitoring the Williams B Removal Action, EPA incurred
18 costs in the amount of \$5,340.99 to prevent, minimize, or mitigate oil pollution
19 from the Williams B Facility.

20 149. EPA’s removal costs incurred in connection with the Williams B
21 Removal Action were paid from the Fund.

22 150. On December 23, 2009, the Coast Guard, on behalf of the Fund, sent
23 Defendant a written request under Subchapter I of the OPA for compensation in
24 the amount of \$5,340.99 for removal costs incurred in connection with the
25 Williams B Removal Action.

26 151. Defendant has not paid the Coast Guard for removal costs incurred in
27 connection with the Williams B Removal Action.

1 Violations of Oil Pollution Prevention Regulations

2 152. Each of the oil and gas production facilities identified in Attachment
3 A was in operation on or before August 16, 2002.

4 153. At times relevant to this action, each facility identified in Attachment
5 A was located on land within the United States.

6 154. At times relevant to this action, each facility identified in Attachment
7 A was located on land within the United States other than submerged lands.

8 155. At times relevant to this action, each facility identified in Attachment
9 A was a non-transportation-related “onshore facility” within the meaning of 40
10 C.F.R. § 112.2.

11 156. At times relevant to this action, each facility identified in Attachment
12 A was engaged in drilling, producing, gathering, storing, processing, refining,
13 transferring, distributing, using, or consuming oil and oil products.

14 157. At times relevant to this action, each facility identified in Attachment
15 A had oil in one or more aboveground containers, or containers that were not
16 “permanently closed” as defined in 40 C.F.R. § 112.2.

17 158. The Bell Facility and the Davis Facility each have a total oil storage
18 capacity of at least one million gallons.

19 159. The Bell Facility and the Davis Facility each have had a reportable oil
20 discharge of at least 10,000 gallons within the last five years.

21 160. Drainage from the Chamberlin Facility travels downgradient for
22 approximately 1,000 feet before entering Zaca Tributary.

23 161. Drainage from the Davis Facility travels downgradient for
24 approximately 800 feet before entering Zaca Tributary.

25 162. Drainage from the Bell Facility travels directly into Palmer Road
26 Creek through pipes that cross Palmer Road Creek.

27 163. Drainage from the Williams B Facility travels downgradient for
28 approximately 250 feet before entering an unnamed tributary to Cat Canyon Creek.

1 164. Drainage from the Battles Facility travels downgradient along Battles
2 Road for half a mile before entering a flood control channel that flows into the
3 Santa Maria River.

4 165. Drainage from the Casmalia Facility travels downgradient for
5 approximately 450 feet before entering an unnamed tributary to Casmalia Creek.

6 166. Drainage from the Escole Facility travels downgradient for
7 approximately 600 feet before entering an unnamed tributary to Casmalia Creek.

8 167. The unnamed tributaries to Casmalia Creek described in Paragraphs
9 165 and 166 are tributaries to Casmalia Creek. Casmalia Creek flows into the
10 Pacific Ocean, a traditionally navigable water.

11 168. The unnamed tributaries to Casmalia Creek described in Paragraphs
12 165 and 166 and Casmalia Creek each have a bed, banks, and ordinary high water
13 marks.

14 169. The unnamed tributaries to Casmalia Creek described in Paragraphs
15 165 and 166 and Casmalia Creek are “navigable waters” within the meaning of
16 Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7).

17 170. Drainage from the Lakeview Facility travels downgradient for
18 approximately one mile before entering Bradley Canyon Creek.

19 171. Drainage from the Lloyd Facility travels downgradient for
20 approximately 50 feet before entering an unnamed tributary to Bradley Canyon
21 Creek.

22 172. Drainage from the Los Flores Facility travels downgradient for
23 approximately 380 feet before entering an unnamed tributary to Bradley Canyon
24 Creek.

25 173. Drainage from the Security Facility travels downgradient for
26 approximately 200 feet before entering an unnamed tributary to Bradley Canyon
27 Creek.

28 174. Drainage from the U-Cal Facility travels directly into Bradley Canyon

1 Creek or an unnamed tributary to Bradley Canyon Creek through pipes that cross
2 Bradley Canyon Creek or an unnamed tributary to Bradley Canyon Creek.

3 175. The unnamed tributaries to Bradley Canyon Creek described in
4 Paragraphs 171 through 174 are tributaries to Bradley Canyon Creek. Bradley
5 Canyon Creek is a tributary to the Santa Maria River.

6 176. The unnamed tributaries to Bradley Canyon Creek described in
7 Paragraphs 171 through 174 and Bradley Canyon Creek each have a bed, banks,
8 and ordinary high water marks.

9 177. The unnamed tributaries to Bradley Canyon Creek described in
10 Paragraphs 171 through 174 and Bradley Canyon Creek are “navigable waters”
11 within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C.
12 §§ 1321(b)(3) and 1362(7).

13 178. At times relevant to this action, a discharge of oil from each facility
14 identified in Attachment A could reasonably have been expected to cause a film or
15 sheen upon or discoloration of the surface of the water of the navigable waters of
16 the United States or adjoining shorelines, or to cause a sludge or emulsion to be
17 deposited beneath the surface of the water of the navigable waters of the United
18 States or upon adjoining shorelines.

19 179. At times relevant to this action, each facility identified in Attachment
20 A was subject to the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part
21 112.

FIRST CLAIM FOR RELIEF

Violations of Section 311 of the Clean Water Act

24 180. Paragraphs 1 through 179 are realleged and incorporated herein by
25 reference.

181. The discharges alleged in Paragraphs 65 through 70 and Paragraphs 91 through 106 violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

28 || 182. Pursuant to Section 311(b)(7)(A) and (D) of the CWA, 33 U.S.C.

1 § 1321(b)(7)(A) and (D), Defendant is liable for a civil penalty of up to \$1,100 per
2 barrel of oil discharged, or, if it is established that the violations were the result of
3 gross negligence or willful misconduct, a civil penalty of up to \$4,300 per barrel of
4 oil discharged.

5 SECOND CLAIM FOR RELIEF

6 Violations of Section 301 of the Clean Water Act

7 183. Paragraphs 1 through 179 are realleged and incorporated herein by
8 reference.

9 184. The discharges alleged in Paragraphs 65 through 70 and Paragraphs
10 91 through 106 violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

11 185. Subject to a reasonable opportunity for further investigation or
12 discovery, violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), are
13 likely to continue unless enjoined by an order of the Court.

14 186. Defendant is subject to appropriate injunctive relief pursuant to
15 Section 309(b) of the CWA, 33 U.S.C. § 1319(b), to prevent further discharges
16 from its facilities into waters of the United States.

17 THIRD CLAIM FOR RELIEF

18 Failure to Prepare and Implement and/or Maintain SPCC Plans

19 (40 C.F.R. Part 112)

20 187. Paragraphs 1 through 179 are realleged and incorporated herein by
21 reference.

22 188. At each of the oil and gas production facilities identified in
23 Attachment A, Defendant failed to prepare and implement an SPCC Plan in
24 accordance with the requirements of 40 C.F.R. Part 112, as required by 40 C.F.R.
25 § 112.3, and/or failed to maintain an SPCC Plan in accordance with the
26 requirements of 40 C.F.R. Part 112 (2002), as required by 40 C.F.R. § 112.3(a).

27 189. At certain oil and gas production facilities identified in Attachment A,
28 Defendant:

1 a. Failed to prepare an SPCC Plan, as required by 40 C.F.R.
2 § 112.1(e), 112.3, and 112.7 and/or 40 C.F.R. § 112.1(e), 112.3, and 112.7 (2002)
3 (Lakeview and Williams B Facilities);

4 b. Failed to review, amend as necessary, and recertify its SPCC
5 Plan, as required by 40 C.F.R. § 112.5(a) and/or 40 C.F.R. § 112.5(a) (2002)
6 (Davis Facility);

7 c. Failed to include in its SPCC Plan adequate detail regarding
8 discharge prevention and drainage controls, as required by 40 C.F.R. § 112.7(a)(3)
9 and/or 40 C.F.R. § 112.7(c) (2002) (Bell, Lloyd, and Security Facilities);

10 d. Failed to provide and maintain adequate containment and
11 drainage controls, as required by 40 C.F.R. § 112.7(c), 112.7(h)(1), and 112.9(c)(2)
12 and/or 40 C.F.R. § 112.7(c), 112.7(e)(4), and 112.7(e)(5) (2002) (Battles, Bell,
13 Casmalia, Davis, Lakeview, Lloyd, Los Flores, Security, U-Cal, and Williams B
14 Facilities);

15 e. Failed to maintain with its SPCC Plan adequate written
16 inspection procedures and records of inspections, as required by 40 C.F.R.
17 § 112.7(e) and/or 112.7(e)(8) (2002) (Bell, Security, and U-Cal Facilities);

18 f. Failed to inspect for and remove accumulations of discharged
19 oil, as required by 40 C.F.R. § 112.9(b)(1) and (2) and/or 40 C.F.R. § 112.7(e)(5)
20 (2002) (Battles, Bell, Casmalia, Chamberlin, Davis, Los Flores, Security, U-Cal,
21 and Williams B Facilities);

22 g. Used containers for the storage of oil whose material and
23 construction were incompatible with the material stored and the conditions of
24 storage, in violation of 40 C.F.R. § 112.9(c)(1) and/or 40 C.F.R. § 112.7(e)(5)
25 (2002) (Battles, Lakeview, Lloyd, and Williams B Facilities);

26 h. Failed to develop and implement a program of flowline
27 maintenance, as required by 40 C.F.R. § 112.9(d)(3) and/or 40 C.F.R. § 112.7(e)(5)
28 (2002) (Battles, Bell, Casmalia, Chamberlin, Davis, Escolle, Lakeview, Lloyd, Los

1 Flores, Security, U-Cal, and Williams B Facilities); and

2 i. Failed to address in its SPCC Plan the requirements for onshore
3 oil drilling and workover facilities set forth in 40 C.F.R. § 112.10 and/or 40 C.F.R.
4 § 112.7(e)(6) (2002) (Battles, Bell, Casmalia, Chamberlin, Davis, Escolle, Lloyd,
5 Los Flores, Security, and U-Cal Facilities).

6 190. Subject to a reasonable opportunity for further investigation or
7 discovery, these violations are likely to continue unless enjoined by an order of the
8 Court.

9 191. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C.
10 § 1321(b)(7)(C), and 40 C.F.R. § 19, Defendant is liable for a civil penalty of up to
11 \$32,500 per day of violation for each violation of the Oil Pollution Prevention
12 regulations occurring from March 15, 2004, through January 12, 2009, and up to
13 \$37,500 per day of violation for each violation of the Oil Pollution Prevention
14 regulations occurring after January 12, 2009.

15 FOURTH CLAIM FOR RELIEF

16 Failure to Prepare and Submit Facility Response Plans

17 (40 C.F.R. § 112.20)

18 192. Paragraphs 1 through 179 are realleged and incorporated herein by
19 reference.

20 193. Defendant failed to prepare and submit to EPA a Facility Response
21 Plan for the Bell Facility and the Davis Facility in accordance with the
22 requirements of 40 C.F.R. § 112.20.

23 194. By failing to prepare and submit to EPA a Facility Response Plan for
24 the Bell Facility and the Davis Facility, Defendant violated 40 C.F.R. § 112.20.

25 195. Subject to a reasonable opportunity for further investigation or
26 discovery, these violations are likely to continue unless enjoined by an order of the
27 Court.

28 196. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C.

1 § 1321(b)(7)(C), and 40 C.F.R. § 19, Defendant is liable for a civil penalty of up to
2 \$32,500 per day of violation for each such violation occurring from March 15,
3 2004, through January 12, 2009, and up to \$37,500 per day of violation for each
4 such violation occurring after January 12, 2009.

5 FIFTH CLAIM FOR RELIEF

6 Recovery of Removal Costs Under the Oil Pollution Act of 1990

7 197. Paragraphs 1 through 179 are realleged and incorporated herein by
8 reference.

9 198. Defendant is the responsible party for facilities from which oil was
10 discharged, or which posed the substantial threat of a discharge of oil, into or upon
11 the navigable waters or adjoining shorelines in connection with the January 2008
12 Davis Spill, the January 2008 Bell Spill, the April 2008 Bell Spill, the December
13 2008 Bell Spill, and the Williams B Removal Action.

14 199. As the responsible party for such facilities, Defendant is liable to the
15 United States, pursuant to Section 1002(a) of the OPA, 33 U.S.C. § 2702(a), for at
16 least \$2,414,345.63 in removal costs that resulted from the incidents listed in
17 Paragraph 198, along with interest and attorney's fees.

18 SIXTH CLAIM FOR RELIEF

19 Violations of California Water Code Section 13350

20 200. Paragraphs 1 through 179 are realleged and incorporated herein by
21 reference.

22 201. The discharges alleged in Paragraphs 68 through 71, Paragraphs 76
23 through 82, Paragraph 84, Paragraphs 90 through 99, Paragraphs 104 through 107,
24 Paragraphs 112 through 119, and Paragraphs 131 through 136 violated California
25 Water Code section 13350(a).

26 202. Pursuant to California Water Code section 13350(d), Defendant is
27 liable to the Regional Board for a civil penalty of up to \$15,000 per day of
28 violation, or up to 20 dollars per gallon of waste discharged.

SEVENTH CLAIM FOR RELIEF

Violations of California Water Code Section 13385

203. Paragraphs 1 through 179 are realleged and incorporated herein by reference.

204. The discharges alleged in Paragraphs 68 through 71, Paragraphs 76 through 82, Paragraph 84, Paragraphs 90 through 99, Paragraphs 104 through 107, Paragraphs 112 through 119, and Paragraph 135 violated California Water Code section 13385(a).

205. Pursuant to California Water Code section 13385(d), Defendant is liable to the Regional Board for a civil penalty of up to \$25,000 per day of violation, and up to 25 dollars per gallon of waste discharged in excess of 1,000 gallons not recovered.

EIGHTH CLAIM FOR RELIEF

Violations of California Fish and Game Code Section 5650

206. Paragraphs 1 through 179 are realleged and incorporated herein by reference.

207. The discharges alleged in Paragraphs 68 through 71, Paragraphs 76 through 82, Paragraph 84, Paragraphs 90 through 99, Paragraphs 104 through 107, Paragraphs 112 through 119, and Paragraphs 134 through 136 violated California Fish and Game Code section 5650(a).

208. Pursuant to California Fish and Game Code section 5650.1, Defendant is liable to DFG for a civil penalty of up to \$25,000 per day of violation.

NINTH CLAIM FOR RELIEF

Recovery of Natural Resource Damages

(California Fish and Game Code Section 12016)

209. Paragraphs 1 through 179 are realleged and incorporated herein by reference.

210. The discharges alleged in Paragraphs 68 through 71, Paragraphs 76

1 through 82, Paragraph 84, Paragraphs 90 through 99, Paragraphs 104 through 107,
2 Paragraphs 112 through 119, and Paragraphs 134 through 136 resulted in damages
3 to natural resources.

4 211. Pursuant to California Fish and Game Code section 12016, Defendant
5 is liable to DFG for all actual damages to fish, plant, bird or animal life or their
6 habitat and, in addition, for the reasonable costs incurred in cleaning up the
7 deleterious substances or material or abating its effects, or both.

8 **TENTH CLAIM FOR RELIEF**

9 **Recovery of Costs**

10 **(California Fish and Game Code Section 13013)**

11 212. Paragraphs 1 through 179 are realleged and incorporated herein by
12 reference.

13 213. DFG made expenditures from the Oil Pollution Administrative
14 Subaccount to respond to the discharges alleged in Paragraphs 68 through 71,
15 Paragraphs 76 through 82, Paragraph 84, Paragraphs 90 through 99, Paragraphs
16 104 through 107, Paragraphs 112 through 119, and Paragraphs 134 through 136.

17 214. DFG incurred costs arising from the administration and enforcement
18 of applicable pollution laws in connection with the discharges described in the
19 paragraph immediately above.

20 215. Pursuant to California Fish and Game Code section 13013(c),
21 Defendant is liable to DFG for all such expenditures and costs.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, the United States of America and the People of
24 the State of California *ex rel.* California Department of Fish and Game and
25 California Regional Water Quality Control Board, Central Coast Region,
26 respectfully request that the Court:

27 1. Issue an order requiring Defendant to take all appropriate action to
28 prevent future discharges of oil into waters of the United States and waters of the

1 state;

2 2. Enter judgment against Defendant and award the United States civil
3 penalties in an amount up to \$1,100 per barrel of oil discharged for the discharges
4 alleged above, or, if it is established that the discharges were the result of gross
5 negligence or willful misconduct, in an amount up to \$4,300 per barrel of oil
6 discharged;

7 3. Issue an order requiring Defendant to take all appropriate action to
8 ensure implementation of the Oil Pollution Prevention regulations;

9 4. Enter judgment against Defendant and award the United States civil
10 penalties in an amount up to \$32,500 per day of violation for each violation of the
11 Oil Pollution Prevention regulations at 40 C.F.R. Part 112 occurring from March
12 15, 2004, through January 12, 2009, and up to \$37,500 per day of violation for
13 each violation of the Oil Pollution Prevention regulations occurring after January
14 12, 2009;

15 5. Enter judgment against Defendant and award the United States at least
16 \$2,414,345.63 in removal costs incurred by the United States in connection with
17 the incidents listed in Paragraph 198, along with interest and attorney's fees;

18 6. Enter judgment against Defendant and award the Regional Board civil
19 penalties in an amount up to 20 dollars per gallon discharged or up to \$15,000 per
20 day of violation (whichever is greater) for violations of California Water Code
21 section 13350, or in the alternative, civil penalties in an amount up to \$25,000 per
22 day of violation plus 25 dollars per gallon of waste discharged in excess of 1,000
23 gallons not cleaned up pursuant to California Water Code section 13385
24 (whichever is greater);

25 7. Enter judgment against Defendant and award DFG civil penalties in
26 an amount up to \$25,000 per violation of California Fish and Game Code section
27 5650;

28 8. Enter judgment against Defendant and award DFG an amount

1 sufficient to compensate for the natural resource damages caused by Defendant's
2 releases pursuant to California Fish and Game Code section 12016;

3 9. Enter judgment against Defendant and award DFG at \$194,938 in
4 currently outstanding unpaid response costs pursuant to California Fish and Game
5 Code section 13013 (the amount of such response costs owed to DFG is expected
6 to change over time);

7 10. Award DFG and the Regional Board all costs of investigating and
8 prosecuting the action, including expert fees, reasonable attorney's fees, and costs
9 pursuant to California Code of Civil Procedure section 1021.8; and

10 11. Grant such other relief as this Court deems just and proper.

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Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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1 FOR THE PEOPLE OF THE STATE OF
2 CALIFORNIA, *ex rel.* CALIFORNIA
3 DEPARTMENT OF FISH AND GAME and
4 CALIFORNIA REGIONAL WATER
5 QUALITY CONTROL BOARD, CENTRAL
6 COAST REGION:

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1
2 **ATTACHMENT A**
3

4 **Facilities In Violation of Oil Pollution Prevention Regulations**
5 **(40 C.F.R. Part 112)**

6 1. Battles Facility, 1348 Battles Road, Santa Maria, CA
7 2. Bell Facility, 6780 Palmer Road, Santa Maria, CA
8 3. Casmalia Facility, 5080 Black Road, Santa Maria, CA
9 4. Chamberlin Facility, 5017 Zaca Station Road, Los Olivos, CA
10 5. Davis Facility, 5017 Zaca Station Road, Los Olivos, CA
11 6. Escole Facility, 7275 Graciosa Road, Santa Maria, CA
12 7. Lakeview Facility, 2617 East Clark Avenue, Santa Maria, CA
13 8. Lloyd Facility, 5200 Dominion Road, Santa Maria, CA
14 9. Los Flores Facility, 6151 Dominion Road, Santa Maria, CA
15 10. Security Facility, 5200 Dominion Road, Santa Maria, CA
16 11. U-Cal Facility, 6527 Dominion Road, Santa Maria, CA
17 12. Williams B Facility, Cat Canyon Road, Santa Maria, CA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dean D. Pregerson and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

CV11- 5097 DDP (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.